

CHAPTER 75-03-11
PRESCHOOL EARLY CHILDHOOD SERVICES

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75-03-11-01. Purpose. Repealed effective January 1, 1999.

75-03-11-02. Authority and objective. Repealed effective January 1, 1999.

75-03-11-03. Definitions. The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
2. "Attendance" means the total number of children present at any one time at the facility.
3. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
4. "Director" means an individual responsible for supervising and organizing program activities in a preschool.
5. "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
6. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a preschool.
8. "Preschool" means a program licensed to provide early childhood services which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
9. "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
10. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.

11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-04. Effect of licensing and display of license.

1. The issuance of a license to operate a preschool is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children for whom the preschool may provide care. The preschool may not admit a greater number of children than the license allows.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11-05. Denial or revocation of license.

1. The department may deny or revoke a license under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an applicant or operator appeals an action to revoke a license, the operator may continue the operation of the preschool pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a preschool without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the

children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-11-06. Provisional license.

1. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional license for the operation of a preschool although the preschool educational facility applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the operator has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the director of the regional human

service center or the director's designee and must be acknowledged in writing by the applicant or operator.

5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.
6. The department may not issue a provisional license if the preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the preschool is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the operator is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

History: Effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-07. Application for and nontransferability of preschool license.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license. An application for a new license must be filed upon change of operator or location.

3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after January 1, 2011. Existing operators will be exempt from this provision until January 1, 2016, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11-08. Duties of preschool operator. The operator of a preschool is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director, delegate appropriate duties to the director, and shall:
 - a. Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open; and
 - b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director;
2. Apply for a license for the preschool;
3. Possess knowledge or experience in management and interpersonal relations;
4. Notify the authorized agent of any major changes in the operation or in the ownership or governing body of the preschool, including staff member changes;
5. Ensure that liability insurance against bodily injury and property damage for the preschool is carried;
6. Formulate written policies and procedures for the operations of the preschool relating to:
 - a. Hiring practices and personnel policies for staff members;
 - b. Methods for obtaining references and employment histories of staff members;

- c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment; and
 - e. The responsibilities and rights of staff members and parents;
7. Maintain records of enrollment, attendance, health, financial, and other required records;
 8. Be responsible for all preschool staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the preschool;
 9. Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 10. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool;
 11. Ensure preadmission visits for children and their parents are offered so the preschool's program, fees, operating policies, and procedures can be viewed and discussed, including:
 - a. An explanation of how accidents and illnesses may be handled;
 - b. The methods of developmentally appropriate discipline and guidance techniques to be used; and
 - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 12. Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
 13. Ensure the preschool is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 14. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the preschool by children or others on their behalf;
 15. Provide parents, upon request, with progress reports on their children and provide unlimited opportunities for parents to observe their children while in care;

16. Provide parents with the name of the preschool operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
17. Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive as expected at the preschool;
18. Ensure, whenever services are provided, that at least one staff member, substitute staff member, or emergency designee, is on duty who meets current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department and is certified or trained in a department-approved program to provide first aid;
19. Meet the qualifications of the director set forth in section 75-03-11-28 if the operator is also the director; and
20. Report to the authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the preschool or attributable to care received in the preschool;
 - b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the preschool.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-08.1. Minimum qualifications of a preschool director.

1. A preschool director shall be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
2. The director shall hold at least one of the following qualifications, in addition to those set out in subsection 1:

- a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a preschool or similar setting;
- b. A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or directly related fields, with at least six months of experience in a preschool or similar setting;
- c. An associate degree in the field of early childhood development with at least six months of experience in a preschool or similar setting;
- d. Current certification as a child development associate or similar status, with at least one year of experience in a preschool or similar setting;
- e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or directly related fields, with at least one year of experience in a preschool or similar setting; or
- f. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, preschool, or similar setting.

History: Effective January 1, 1999; amended effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-08.2. Minimum qualifications of a preschool teacher. A teacher shall:

- 1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care and early childhood education.
- 2. Hold at least one of the following qualifications:
 - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or directly related fields;
 - b. A teaching certificate in elementary education or kindergarten endorsement;
 - c. An associate degree in the field of early childhood education;

- d. Current certification as a child development associate or similar status; or
 - e. Certification from a Montessori teacher training program.
3. Meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-08.1, if the teacher is also the director.

History: Effective January 1, 1999; amended effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-08.3. Minimum qualifications of a preschool assistant. Each assistant shall:

- 1. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care and early education.
- 2. Hold either a high school diploma or a high school equivalency.

History: Effective January 1, 1999; amended effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-09. Staffing requirements.

- 1. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparations may not be counted in the child to staff member ratio for periods of time when they are engaged in housekeeping or food preparation.
- 2. The minimum ratio of staff members responsible for caring for or teaching children to children in preschool must be:
 - a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
 - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
 - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.

- d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
 - e. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of ten children, if the group includes children two years old.
 - f. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty children, if the group includes children three years old.
 - g. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty-four children, ages four to six.
- 3. When there are mixed-age groups, the number of children in each category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
 - 4. If a child with special needs is admitted to the preschool, the child's developmental age level must be used in determining the child to staff ratios.
 - 5. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the preschool.
 - 6. Children using the preschool for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-11-10. Duties of a preschool director. The director, in collaboration with the operator, shall:

1. Implement policies and procedures for maintaining compliance with licensing rules;
2. Maintain required enrollment, attendance, health, and other required records;
3. Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;
4. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of each child at all times so the staff member is capable of intervening to protect the health and safety of the child; and
5. Perform other duties as delegated by the operator.

History: Effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-11. Duties of a preschool teacher. A teacher, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that the program policies are adhered to in the class or group assigned to the teacher.

History: Effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-12. Minimum qualifications of volunteers. If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and must receive orientation for all assigned tasks.

History: Effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appears questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member may not use or be under the influence of any alcoholic beverages or illegal drugs while children are in care.
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. All staff members responsible for caring for or teaching children shall certify completion of department-approved training related to child care annually.
 - a. A staff member working thirty or more hours per week shall certify a minimum of thirteen hours of department-approved training annually.
 - b. A staff member working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually.
 - c. A staff member working fewer than twenty hours and at least ten hours a week shall certify a minimum of nine hours of department-approved training annually.
 - d. A staff member working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-14. Minimum requirements for facility.

1. The preschool must be properly lighted. If the lighting of the preschool appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

2. Water supply.

- a. The operator shall ensure that the preschool has a drinking water supply from an approved community water system or from a source tested and approved annually by the state department of health;
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual single-service drinking cups; and
- c. The preschool must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

3. Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
 - b. The operator shall provide a minimum of one sink and one flush toilet for each fifteen children, excluding those children who are not toilet trained;
 - c. The operator shall provide at least one handwashing sink per toilet room facility; and
 - d. The operator shall provide hand soap, sanitary hand-drying equipment, single-use cloth towels, or paper towels near handwashing sinks.
4. The operator of a preschool not on a municipal or public water supply or wastewater disposal system shall ensure the preschool's sewage and wastewater system has been approved by the state department of health.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-15. Minimum standards for provision of transportation.

- 1. Prior to licensing, the operator shall establish a written policy governing the transportation of children to and from the preschool, if the preschool provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the preschool. If the preschool provides

transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a preschool, children must be protected by adequate staff member supervision, safety precautions, and liability insurance.
 - a. Staffing requirements must be maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-16. Minimum emergency evacuation and disaster plan.

1. Each operator shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
 - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
 - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
 - c. What will be done if the preschool has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed for the preschool by local or state fire authorities. The operator shall correct or have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the authorized agent.
2. The operator shall ensure that the preschool is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code; or
 - b. The fire inspector's written statement that the preschool has been inspected and that the inspector is satisfied that the preschool meets the minimum fire and safety standards.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools where meals are prepared, the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a sanitary

condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

5. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be

present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.
16. Pets and animals.
 - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
17. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-19. Minimum requirements regarding space.

- 1. Each preschool shall provide adequate indoor and outdoor space for the daily activities of all children for the licensed capacity of the preschool.
- 2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of indoor space per child and a minimum of seventy-five square feet [6.97 square meters] of outdoor play space per child. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the preschool, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the preschool multiplied by seventy-five square feet [6.97 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving each class or group an opportunity to play outdoors daily.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-20. Program requirements.

1. A preschool must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
 - a. The curriculum must promote cognitive, social, emotional, and physical growth of children in care.
 - b. The curriculum must be based on the developmental levels and needs of children enrolled.
2. The director shall exchange information with parents concerning the program, its activities, and the adjustment of the child to the program.
3. Each child's cultural and ethnic background and primary language or dialect must be respected by the staff members.
4. The director or teacher shall design a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-21. Minimum standards for the provision of snacks. An operator shall serve a nutritious snack on a regular basis to children in care for more than two and one-half hours.

History: Effective December 1, 1981; amended effective January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the preschool and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and the business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents authorizing emergency medical care;

- c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the preschool;
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in child; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
- 3. The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The preschool shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation:

1. The preschool must have a written policy regarding the discipline of children. The operator shall provide the policy to, and discuss the policy with, staff members responsible for caring for or teaching children before the preschool begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to children nor may discipline be administered by children.
4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.
5. A child may not be punished for lapses in toilet training.
6. A staff member may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of other children.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A staff member may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.
10. A staff member or any other adult in or at the preschool may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.

12. A staff member may not withhold active play as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-24. [Reserved]

75-03-11-25. Minimum requirements for care of a child with special needs. The operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The operator shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. When a child with special needs is admitted, the operator shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 2, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-26. Minimum provisions regarding emergency care for children. The preschool must have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;

3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Provide a plan for responding to minor illnesses and minor accidents when children are in the care of the preschool, and provide a plan for accessing available medical consultation regarding special care and medication;
7. Require written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent of a child in the preschool who requires medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container; and
 - c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each dose administered, the dosage, the name of the staff member administering the medication, and the name of the child. The operator shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the preschool, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency services available to the preschool, including:
 - a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and

- b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent is notified;
- 10. Establish and implement practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the preschool;
- 11. Require information be provided to parents, as needed, concerning child health and social services available in the community; and
- 12. Require that the preschool inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 2, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-27. Effect of conviction on licensure and employment.

- 1. An applicant, operator, or director may not be, and a preschool may not employ or allow, in any capacity that involves or permits contact between the teacher, assistant, emergency designee, or staff member and any child cared for by the preschool, an operator, director, staff member, teacher, assistant, or emergency designee, who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution;

12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, operator, or director, or the operator in the case of a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- 2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.
 - 3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 - 4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
 - 5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during

the eleven years preceding the signed authorization for the background check.

History: Effective January 1, 1999; amended effective January 2, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-28. Child abuse and neglect determinations. An operator shall ensure safe care for the children receiving services in the preschool. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by any applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator and to the director of the regional human service center or the director's designee for consideration and action on the preschool application or license. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective January 1, 1999; amended effective January 2, 2011.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-29. Correction of violations.

1. Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of section 75-03-11-09, section 75-03-11-23, or subsection 7 of section 75-03-11-18, within twenty-four hours;

- b. For a violation requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
- 3. All periods for correction begin on the date of receipt of the correction order by the operator.
 - 4. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
 - 5. The operator shall furnish written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms that the corrections have been made.
 - 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 - 7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective January 2, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-11-30. Fiscal sanctions.

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 for each day that the operator has not verified correction, after the allowable time for correction of violations ends, that the operator has not verified correction.
2. The department shall issue a fiscal sanction of fifteen dollars per day for each violation of section 75-03-11-09 for each day that the operator has not verified correction, after the allowable time for correction of violations ends, that the operator has not verified correction.
3. The department shall issue a fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of violations ends, that the operator has not verified correction.

History: Effective January 1, 1999; amended effective January 2, 2011.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-11-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective January 1, 1999; amended effective January 2, 2011.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-10